

LAWRENCE H. MERCHANT

IBLA 83-643

Decided June 27, 1984

Appeal from decision of California State Office, Bureau of Land Management, denying protest of notice of intention to issue competitive geothermal resources leases. CA 13568 and CA 13569.

Set aside and remanded.

1. Geothermal Leases: Cancellation -- Geothermal Leases: Competitive Leases -- Rules of Practice: Appeals: Effect of

Where BLM has denied a protest of the proposed issuance of competitive geothermal resources leases pursuant to sec. 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1982), the effect of the decision is stayed during the time the protestant may file an appeal and while the appeal is pending, and issuance of the leases during that time will be considered subject to cancellation by the Board.

2. Geothermal Leases: Cancellation -- Geothermal Leases: Competitive Leases

Where BLM has issued competitive geothermal resources leases to a corporation pursuant to sec. 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1982), with notice of a private dispute regarding the authority of an officer of the corporation to act on behalf of the corporation in submitting the lease bids, the Board will not direct cancellation of the leases, but BLM may not approve any assignments of the leases, or drilling permits on the leases until the dispute between the parties is resolved through agreement or litigation.

APPEARANCES: Lawrence H. Merchant, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Lawrence H. Merchant has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated April 25, 1983, denying his protest of a notice of intention to issue competitive geothermal resources leases, CA 13568 and CA 13569.

On May 25, 1982, Crownite Corporation (Crownite) filed two competitive geothermal resources lease bids for two parcels of land situated in the COSO known geothermal resources area, pursuant to section 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1982). 1/ The lease bids were signed by H. Cabot Jones, president, Crownite. By letter dated May 25, 1982, appellant wrote to BLM representing himself as president of Crownite and requested copies of the geothermal resources lease bids submitted by Jones. By decision dated January 28, 1983, Crownite was declared the successful bidder for parcels 1 and 2 and was required to submit, in part, executed lease forms and the first year's advance rentals within 30 days of receipt of the decision in accordance with 43 CFR 3220.6. Appellant wrote to BLM on February 22, 1983, as chief executive officer of Crownite, advising that the Board of Directors of Crownite by resolution had instructed him to request that the deposit submitted with the bids be refunded to Crownite in Seattle, Washington. On February 28, 1983, Crownite submitted the required documents signed by H. Cabot Jones, president. In his letter of March 22, 1983, to BLM, appellant challenged Jones' authority to act for Crownite and requested that no action be taken on issuing the leases until the internal affairs of Crownite were settled. By decision dated March 25, 1983, BLM notified appellant that "ten days after receipt of this notice" it would issue two geothermal resources leases embracing parcels 1 and 2 unless enjoined from doing so by a court of competent jurisdiction. BLM stated that a "thorough review of the administrative record discloses that Mr. Jones is authorized to act for Crownite Corporation in accepting these leases." Specifically, BLM relied on the following documents submitted by Jones:

1. A certified copy of an Order of the Superior Court of the State of California for the County of Los Angeles, Case No. C 396 127, authorizing an election of officers of Crownite Corporation to be held;
2. A certified copy of the minutes of a special meeting of the shareholders of Crownite Corporation at which Mr. Jones was elected President of said Corporation and was authorized to represent the Corporation in the conduct of business, and
3. A certified copy of the list of officers of Crownite Corporation on file with the Secretary of State of the State of Nevada which shows Mr. Jones to be the President thereof. 2/

On April 18, 1983, appellant filed a protest with BLM contending that Jones was neither a shareholder, director, nor officer of Crownite when the lease bids were filed on May 25, 1982, and, as such, Jones was not authorized to file the bids. Appellant also stated that the "Order" of the

1/ Parcel 1 consists of 1,280 acres of land situated in secs. 14 and 15, T. 21 S., R. 38 E., Mount Diablo meridian, Inyo County, California. Parcel 2 consists of 2,560 acres of land situated in secs. 21, 22, 27, and 28, T. 21 S., R. 38 E., Mount Diablo meridian, Inyo County, California.

2/ No certified copy of either document is contained in the case files submitted on appeal.

Superior Court, Case No. C 396 127, cited by BLM, was "on appeal" (Protest at 7). Appellant also argued that the special meeting of the shareholders of Crownite at which Jones was elected president was held in violation of either the court order or the statutes of Nevada and the corporate bylaws. Appellant stated that the shareholders of Crownite did not approve the lease bids. Appellant concluded that issuance of the geothermal resources leases should be stayed "until the internal affairs of Crownite are settled" (Letter to State Director, California State Office, BLM, from appellant, dated March 22, 1983). In its April 1983 decision, BLM denied appellant's protest, stating that "[t]he material contained in your protest is undocumented and insufficient to delay the issuance of the geothermal leases, per our notice of March 25, 1983." BLM further stated that: "An administrative appeal from this decision denying your protest will not stay the issuance of the geothermal steam leases to Crownite Corporation." On May 2, 1983, appellant filed with BLM a notice of appeal from the April 1983 decision, and on May 4, 1983, appellant filed with the Board a request for a stay of issuance of the geothermal resources leases to Crownite. BLM forwarded the case files to the Board on May 23, 1983. During the interim, BLM issued two geothermal resources leases, effective June 1, 1983, to Crownite, embracing parcels 1 and 2. The lease forms (Form 3200-21 (May 1974)) were signed by H. Cabot Jones, president, Crownite, on February 25, 1983, and by the Deputy State Director, California State Office, BLM, on May 6, 1983.

Before proceeding further, we will set forth certain pertinent facts from the administrative record. On July 16, 1973, the board of directors of Crownite, in part, executed employment agreements with Jones and appellant. The board of directors was composed of John H. Newby, H. Cabot Jones, and appellant. Under the employment agreement with appellant, dated July 16, 1973, appellant was designated the "Executive Vice President" with authority to "direct * * * all activities of Employer's business" for a term of 7 years and "from year to year thereafter." On August 2, 1976, Judge John T. Rickard of the Superior Court of the State of California for the county of Santa Barbara, in Merchant v. Crownite Corp., No. 109369, held that the employment agreement with appellant "remains in full force and effect" (Reporter's Transcript, Findings and Judgment of the Court, at 8). The court stated that the officers "shall remain to be Mr. Jones as president and treasurer, [and] Mr. Merchant as secretary and vice-president." Id. In addition, the court invalidated the election of a board of directors composed of Jones, John Moffit, and Richard Noyes at a special meeting of the shareholders on June 3, 1975, and reinstated Jones, appellant, and Mary Ann Reid, elected on April 23, 1974, as the directors.

On September 10, 1981, the Eighth Judicial District Court of the State of Nevada for the County of Clark in Merchant v. Crownite Corp., No. A 182 373, pursuant to a stipulation by the parties, ordered that notice be provided of a meeting of shareholders on October 7, 1981. On October 7, 1981, the shareholders elected a board of directors composed of Bruce Burton, William F. Niemi, Jr., and appellant. The shareholders rejected a slate composed of Jones, John H. Newby, and James Miner. On March 4, 1982, Jones filed a first amended complaint in the Superior Court of the State of California for the county of Los Angeles in Jones v. Merchant, No. C 396 127. The first cause of action was directed at the validity of the October 7, 1981, election of the board of directors, contending that a substantial

number of shares were "not validly issued or were procured as a result of fraud upon Crownite" (Amended Complaint at 6). By order dated April 19, 1982, Judge Leon Savitch of the Superior Court of the State of California for the county of Los Angeles, in Jones v. Merchant, *supra*, held that the October 7, 1981, election was "invalid" and that the election of Burton, Niemi, and appellant as officers "subsequent to October 7, 1981" was also "invalid" (Order at 2). The court further stated that a meeting of shareholders would be held "for the purpose of electing a new Board of Directors of Crownite Corporation." *Id.* at 3. Appellant appealed the April 1982 order in Jones v. Merchant, *supra*. On April 30, 1982, a special meeting of the shareholders elected Jones, John H. Newby, and Ferris Ashley as the directors. On May 1, 1982, the board of directors elected the following officers: Jones, president; John H. Newby, secretary/treasurer; Marie Claus, vice president; and Eric Oldendorf, assistant secretary/assistant treasurer. In addition, the directors authorized Jones "to negotiate on behalf of Crownite such contracts as may be necessary to properly exploit the geothermal resources of Crownite" (Minutes of May 1, 1982, Meeting of Board of Directors, at 3).

On July 7, 1982, Jones filed an amended list of the officers and directors of Crownite with the Secretary of State, State of Nevada. Jones is listed as the president.

[1] Initially, we consider whether BLM should have issued the geothermal resources leases. The Departmental regulations provide for the filing of a protest "by any person to any action proposed to be taken in any proceeding before the Bureau." 43 CFR 4.450-2. Moreover, denial of a protest constitutes a BLM decision from which the "adversely affected" party "shall have a right to appeal to the Board." 43 CFR 4.410(a); see California Association of Four-Wheel Drive Clubs, 30 IBLA 383 (1977). Accordingly, appellant had a right to appeal from the April 1983 BLM decision denying his protest.

The regulations further provide that a decision will not be effective during the time in which a person adversely affected may file a notice of appeal and that the filing of a timely notice of appeal will further suspend the effect of the decision appealed from until a decision is issued on appeal. 43 CFR 4.21(a). When an appeal from a decision of a BLM official is properly filed, that official loses jurisdiction over the case and has no authority to take any action on the case until jurisdiction is restored by Board action disposing of the appeal. ^{3/} Any adjudicative action taken by BLM after an appeal is filed relating to the subject matter of the appeal is a nullity because BLM is acting without jurisdiction. Sierra Club, 57 IBLA 288, 291 (1981); James T. Brown, 46 IBLA 265, 271 (1980). Accordingly, the action taken by BLM to issue the geothermal resources leases to Crownite after appellant had filed a notice of appeal from denial of his protest was improper. Thus, the leases are subject to cancellation.

^{3/} BLM may request the Director, Office of Hearings and Appeals, or the Board to place a decision "in full force and effect immediately" where "the public interest [so] requires." 43 CFR 4.21(a). No request was made by BLM in the present case.

[2] BLM concluded that H. Cabot Jones was authorized to act on behalf of Crownite in filing the bids and in accepting the geothermal resources leases based on their review of the three documents listed in their March 25, 1983, Notice of Intention to Issue Geothermal Lease. The validity of the board of directors', the officers', and Jones' actions on behalf of Crownite turns on the April 19, 1982, order of Judge Leon Savitch in Jones v. Merchant, *supra*. We note that the order was and may still be on appeal in the State courts of California. Such an appeal would resolve questions of the proper constitution of shareholders of Crownite and ultimately the makeup of its board of directors and officers. In such circumstances, we believe that the Department should be guided by longstanding principles adopted in connection with disputed oil and gas lease assignments. As we stated in Petrol Resources Corp., 65 IBLA 104, 109 (1982):

[W]here there is a private dispute as to an oil and gas lease assignment, the Department has historically declined to adjudicate issues regarding the validity or effect of the assignment and thereby has maintained the status quo until the parties have had an opportunity to settle their dispute privately or in court. William B. Brice, 53 IBLA 174, 177, *aff'd*, Brice v. Watt, No. C-81-0155 (D. Wyo. Dec. 4, 1981); John D. and Elizabeth Archer, 46 IBLA 203, 206 (1980). In cases where an assignment has been approved by BLM without notice of the controversy, and the Department subsequently receives notice, it has declined to disturb existing conditions without evidence of agreement of the parties or a court decree on the matter in controversy. McCulloch Oil Corporation of California, A-30208 (Nov. 25, 1964); Anthony C. Vanderbecke, A-28073 (Feb. 11, 1960).

See also Spectrum Oil & Gas Co., 73 IBLA 162 (1983).

The present case clearly involves a private dispute as to the authority of H. Cabot Jones to act on behalf of Crownite. Accordingly, for this reason also, BLM should not have issued the geothermal resources leases. ^{4/}

However, the Department has already issued the leases to Jones as president of Crownite. To cancel the leases would amount to tacit acceptance and approval of appellant's claims. But, the fact that we allow the leases to stand should not be taken as evidence of the Department's view that the issuance of the leases to Jones was proper. By letter dated March 27, 1984, the corporate secretary of Crownite submitted a letter written by Mark O. Heany, Esq., in which he advised that his clients do not intend to appeal Judge Savitch's order and that he would be filing a voluntary dismissal of the appeal in Jones v. Merchant, *supra*. No such document, however, has been

^{4/} We also believe that the Board is not in a position to resolve this controversy in view of the incomplete and not fully authenticated nature of the record and, in any case, should not resolve the controversy because the case turns ultimately on questions of state law which are more appropriate for state court determination. Nick DiRe, 55 IBLA 151, 154 (1981); Halvor Holbeck, A-27167 (Nov. 14, 1955).

filed with this Board. Therefore, BLM is instructed not to approve any assignment of leases CA 13568 and CA 13569 from Crownite, nor to approve any request for permits to drill on these leases until appellant and/or Jones submit a certified court document which evidences the resolution of the appeal in Jones v. Merchant, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to BLM for further action consistent herewith.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

